IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 27 OF 2004

1. Nandkumar Kashinath Deorukhkar
2. Nanda Kashinath Wanje
3. Janardhan Bhau Narvekar
4. Kashinath Laxman Dagare
5. Babi Balu Karambele

All c/o. Shri Lasjomatj :ax,am Gamgare.
15-A, First Floor, Jai Building,
Dr. Aambedkar Road, Parel,
Mumbai 400 012. ... Petitioners

VS.

1. Standard Mill company Ltd.
   New Prabhadevi Road,
   Mumbai 400 025.
2. Member, Industrial Court . ... Respondents

Mr. S. N. Deshpande for petitioners
Mr. S. K. Talsania i/b. Kanga & Co., for respondents.

CORAM: D. G. KARNIK **J.**

DATE: 5/6/2006

ORAL JUDGMENT :

1. This petition is directed against the judgment and order dated 31st January 2003 passed by the Industrial court, Mumbai,

dismissing the revision application of the petitioners .

2. The workers in most of the textile mills in Mumbai struck work indefinitely with effect from 10th January 1982. The strike continued for years and many of the textile mills were closed. However, some of the stronger mills after terminating the services of the striking workmen resumed work by recruiting new employees. The petitioners were employed by respondent no.1 and had participated in the strike since 10th January 1982. In the year 1992 the petitioners issued five individual notices to the respondent no.1, alleging that the respondent no.1 was indulging in unfair labour practice under item 1 of schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act"). The respondents denied the allegation and contended that the petitioners had abandoned the service and therefore their services stood terminated. The petitioners thereafter filed five different complaints, bearing complaint nos. 41 to 45 of 1993 before the 3rd Labour Court, Mumbai, alleging that the respondent no.1 was committing

unfair labour practice under item 1 of schedule IV of the Act. The petitioners prayed for reinstatement with back wages. Along with the complaint each of the petitioners filed a separate application for condonation of delay.

3. The respondents opposed the application for condonation of delay and submitted that there was no justifiable reason for condoning the delay. The five applications filed by the five petitioners were heard together and were disposed of by a common judgment and order dated 23rd February 1997. The learned Labour Court held that there was a delay of more than 10 years in filing of the complaint. It further held that the delay was not properly explained and that the petitioners were guilty of gross negligence. It disbelieved the contention of the petitioners that the petitioners were going to work continuously from 10th January 1982 till 11th March 1992 but they were not allowed to join duties and therefore there was no delay in filing of the application. In view of this the Labour Court dismissed the applications and the complaints.

4. Aggrieved by the order of the Labour Court the petitioners filed a common revision application (no. 181 of 2001) before the Industrial Court, Mumbai. By the judgment and order dated 31st January 2003 the Industrial Court dismissed the Revision application. That judgment and order is impugned in the present petition.

5. Learned counsel for the petitioners submitted that the courts below erred in dismissing the application for condonation of delay. He submitted that the Industrial Court should have adopted a liberal approach and condoned the delay. In support he referred to and relied upon two decisions of the Supreme Court: **Ajab Singh vs. The Sirhind Cooperative Marketing -cum- Processing Service Society Ltd. and anr.** , reported in **AIR 1999 SC. 1351** and **State of Bihar and ors. vs. Kameshwar Prasad Singh and anr.,** reported in **AIR 2000 SC. 2306**.

6. In State of Bihar and ors. vs. Kameshwar Prasad Singh (supra) the appellants had contended that they did not

challenge the orders due to fear of contempt and various coercive orders passed by the High Court. In those facts and circumstances the Supreme Court condoned the delay which was less than two years. In Ajab Singh vs. The Sirhind Cooperative Marketing -cum- Processing Service Society Ltd. and anr. , (supra) the Supreme Court held that the provisions of Article 137 of the Schedule to Limitation Act, 1963 do not apply to a reference made to the Labour Court under the Industrial Disputes Act. The Industrial Disputes Act does not prescribe any period of limitation for making a reference of an industrial dispute. The decision in Ajit Singh does not in terms apply to the present case because the M.R.T.U. & P.U.L.P. Act, unlike Industrial Disputes Act, prescribes period of limitation of 90 days for filing a complaint. Therefore the decision in the case of Ajab Singh (supra) is of no assistance to the petitioners.

7. Learned counsel for the petitioners however, is right in his submission that the courts should adopt a liberal approach while considering whether there was a sufficient cause for

condonation of delay. The decisions of the Supreme Court referred to above also show that the court should not be hyper technical in refusing to condone the delay. Nonetheless, it cannot be said that the delay should be condoned merely for the asking. There should be some explanation. The facts stated in the application for condonation of delay should be such that, if true, they would constitute a reasonable and sufficient ground for condoning the delay.

8. The learned counsel for the petitioners tendered a compilation which contains a copy of the application for condonation of delay made before the Labour Court. In the first paragraph of the application for condonation of delay the petitioners have stated that the complaint was filed under item 1 of Schedule IV. In the second paragraph they have stated that they were entitled to the reliefs mentioned therein as their services had terminated without issuing show cause notice or chargesheet. In the next para they have stated that they have a strong prima facie case, and have asserted that

there was no delay in filing of the complaint. However, they have added :

> "However if there is any delay in filing this case the delay may be condoned without raising any point as the complainant was waiting on promises given by the respondents and the complainant was mislead by the respondents."

9. No details of what promises were allegedly given by the respondent no.1 have been mentioned in that application. In what manner the petitioners were mislead has also not been mentioned. Thus in fact no reason is given by the petitioners as to why there has been a delay of 10 years in filing of each of the complaint. Therefore, assuming that all the averments made in the application for condonation of delay are true the petitioners had not made out any ground for condonation of delay before the Labour Court. In my view, therefore, the Labour Court was right in rejecting the prayer for condonation of delay.

10. By an order dated 23rd February 1997 the Labour Court refused to condone the delay. That order was not challenged

before the Industrial Court in revision or in any other manner within a reasonable time. The revision application was filed challenging the order dated 23rd February 1997 after a lapse of 4 ½ years, i.e., on 6th October 2004. It is true that no period of limitation has been prescribed for filing of the revision. However, it is settled principle of law that when no period of limitation is prescribed the revision application must be filed within a reasonable time. In my view, the reasonable period of time cannot, in any event, exceed three years, which is the normal period of limitation under the residuary article no. 113 of the Limitation Act.

11. The Industrial Court exercising the revisional powers has dismissed the revision on two counts, firstly on merits and secondly on the ground of delay in filing the revision. It has observed that the delay in filing the application is not explained. In the facts and circumstances of the case I see no reason to take a different view.

12. Learned counsel for the petitioners submitted that the

petitioners have a good case on merits and referred to certain decisions on the merits of the case. This court is not concerned in this petition about the merits of the cause as the original petition has not been heard on merits at all. It is therefore unnecessary to refer to the authorities referred to by the petitioners' counsel about the merits of the case. For these reasons the petition is dismissed.

(D.G. KARNIK J.)